

Application No.: 10/531,762
Applicant: Edgar Ivo Maria van der Heijden
Docket No.: 903-132 PCT/US
Page 8

Remarks/Arguments:

Introduction

Claims 1-32 are pending in the application. Claims 16-27 have been withdrawn from consideration. Claim 1 has been amended. Support for claim 1 is found in paragraph [0032]. No new matter has been introduced. Application is believed to be in condition for allowance. Reconsideration and withdrawal of the rejections is respectfully requested in view of the below remarks.

Section 102 Rejections

Claims 1-5, 12-15 and 31-32 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 4,279,938 to Hildebrand (hereinafter “Hildebrand”) in view of U.S. Patent No. 5,342,635 to Schwab (hereinafter “Schwab”). Applicant respectfully traverses the rejection.

Hildebrand teaches the use of a device, for instance a syringe, to create a foam head on a glass of stout. To create a foam head, the syringe is dipped into the stout and stout is drawn from the glass into the syringe thereby creating foam in the syringe chamber. The stout and foam drawn in the syringe chamber may then be ejected to create a foam head on the stout (see column 5, lines 54-68).

The present invention relates to the use of a foam dispensing device in the preparation of a beverage. The term “foam dispensing device” means a dispensing device which can, as a stand-alone device, be used to dispense subsequently doses of foam. When using such foam-dispensing device, the base liquid present in a glass is not required to create a foam.

As previously argued in the response dated July 27, 2010, the foam dispensing device comprises a reservoir containing a stock of foam liquid, i.e. liquid which can be formed into a foam by mixing with air, which foam liquid is different than the base liquid in the glass. According to the Examiner, in the Office Action dated October 13, 2010, this feature would be obvious to a man skilled in the art, since he would add syrup into the syringe separately and then mix the foam and syrup inside the syringe, or mix the foam and syrup outside the syringe and then add it to the syringe.

However, the syringe of Hildebrand does not comprise a reservoir with a stock of foam liquid i.e. liquid that can be formed into a foam by mixing with air. In contrast, the syringe only comprises one space, the pump chamber of both the liquid pump and the air pump, wherein the foam is formed during drawing liquid into the pump chamber. There is no stock of liquid present in a separate reservoir to be formed into a foam by mixing with air. As direct consequence, this liquid can also not be different than the base liquid in the glass.

Application No.: 10/531,762
Applicant: Edgar Ivo Maria van der Heijden
Docket No.: 903-132 PCT/US
Page 10

Therefore, Applicant respectfully disagrees with the Examiner's argument and instead believe that the previously presented arguments of the response dated July 27, 2010 are still valid.

Further, claim 1 has been amended to include the pump assembly that is releasably secured to the neck of the container. In contrast, the syringe of Hildebrand does not comprise a reservoir filled with foam liquid having a neck to which the pump assembly is secured. In contrast, according to the Examiner, the reservoir, the air pump and the liquid pump in the syringe of Hildebrand are formed by the same piston-cylinder combination.

The Examiner cited Schwab as allegedly teaching that edible foam may comprise fruit syrup. However, Schwab fails to overcome the deficiencies of Hildebrand as above-argued.

Therefore, Hildebrand and Schwab, independently and in combination, fail to teach or suggest the invention as recited in claim 1 and 15, and depending claims therefrom. Therefore, withdrawal of the rejection is respectfully requested.

Claims 6-9, 30 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Hildebrand in view of U.S. Patent No. 5,848,721 to Cornell (hereinafter "Cornell") and Schwab. Applicant traverses the rejection.

Application No.: 10/531,762
Applicant: Edgar Ivo Maria van der Heijden
Docket No.: 903-132 PCT/US
Page 11

The above-arguments equally apply herein as claims 6-9 and 30 depend from claim 1.
Further, Hildebrand fails to teach or suggest the dispensing tube being of flexible design.

The Examiner cites Cornell as teaching a straw with a flex-part. However, Cornell fails to overcome the deficiencies as above-discussed.

Therefore, Hildebrand, Cornell and Schwab fail to teach or suggest the presently claimed invention. Thus, withdrawal of the rejection is respectfully requested.

Claims 10-11, and 28 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Hildebrand in view of U.S. Patent No. 4,148,417 to Simmons (hereinafter "Simmons") and Schwab. Applicant traverses the rejection.

The above-arguments equally apply herein as claims 10-11 depend from claim 1.

Simmons teaches a dispensing container having two compartments each containing a different fluid. For each fluid a different dispensing opening is provided. These dispensing nozzles cannot be regarded as nozzles provided at the free end of a dispensing line.

Application No.: 10/531,762
Applicant: Edgar Ivo Maria van der Heijden
Docket No.: 903-132 PCT/US
Page 12

Simmon fails to overcome the above-argued deficiencies of Schwab and Hildebrand. Therefore, claims 10-11 and 28 are patentable over prior art. Withdrawal of the rejection is respectfully requested.

Claim 29 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Hildebrand in view of Schwab, U.S. Patent No. 4,279,938 to Schwab (hereinafter “Schwab ‘938”)), and U.S. Patent Publication No. 2002/0192345 to Kepplinger (hereinafter “Kepplinger”). Applicant traverses this rejection.

The above-arguments equally apply herein as claim 29 depends from claim 1.

The Examiner acknowledges that Schwab and Schwab ‘938 fail to teach or suggest fruit syrup. The Examiner cites Kepplinger as allegedly teaching a fruit concentrates. However, Kepplinger fails to teach or suggest the deficiencies as argued-above.

Therefore, Hildebrand, Schwab, Schwab ‘938, and Kepplinger fail to teach or suggest the presently claimed invention. Withdrawal of the rejection is respectfully requested.

Application No.: 10/531,762
Applicant: Edgar Ivo Maria van der Heijden
Docket No.: 903-132 PCT/US
Page 13

Summary

Therefore, Applicant respectfully submits that claims 1-15, and 28-32 are patentably distinct. This application is believed to be in condition for allowance. Favorable action thereon is therefore respectfully solicited.

Should the Examiner have any questions or comments concerning the above, the Examiner is respectfully invited to contact the undersigned attorney at the telephone number given below.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 08-2461. Such authorization includes authorization to charge fees for extensions of time, if any, under 37 C.F.R. § 1.17 and also should be treated as a constructive petition for an extension of time in this reply or any future reply pursuant to 37 C.F.R. § 1.136.

Respectfully submitted,

/Anna-lisa L. Gallo/
Anna-lisa L. Gallo
Registration No.: 50,279
Attorney for Applicant

HOFFMANN & BARON, LLP
6900 Jericho Turnpike
Syosset, New York 11791
(973) 331-1700